

**Kristina Lawson, JD, Chair  
Panel B**

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARTA MORENO, M.D.,  
Physician's and Surgeon's Certificate  
No. A 45877

Respondent.

Case No. 800-2017-029617

OAH No. 2018050947

**PROPOSED DECISION**

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 10, 2019, in Oakland, California.

Deputy Attorney General Greg W. Chambers represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Attorney Adam G. Slote represented respondent Marta Moreno, M.D., who was present throughout the hearing.

The matter was submitted on January 10, 2019.

**FACTUAL FINDINGS**

1. Respondent Marta Moreno, M.D., received Physician's and Surgeon's Certificate No. A 45877 on March 20, 1989. At the time of the hearing, this certificate was active and was scheduled to expire on December 31, 2020.

2. On March 14, 2018, acting in her official capacity as Executive Officer of the Medical Board of California (Board), complainant Kimberly Kirchmeyer filed an accusation against respondent. The accusation alleges that respondent used alcohol dangerously on January 20, 2017, resulting in a criminal conviction. The accusation alleges that this event constituted unprofessional conduct, and that it warrants discipline to respondent's certificate. At the hearing, complainant clarified that she seeks an order placing the certificate on probation.

### *Professional History*

3. Petitioner grew up in California and received her medical degree in 1987. Between 1987 and 1990 she completed an internship and residency at Highland General Hospital in Oakland.

4. Since 1989, respondent has practiced adult medicine at Kaiser Permanente, first in Fremont and more recently in San Leandro. She also has volunteered regularly since 2004 on Saturday mornings at the Ashland Free Medical Clinic. Respondent mentors new physicians at Kaiser Permanente and has been active in the Kaiser Permanente Latino Association. She speaks fluent Spanish and serves many primarily Spanish-speaking patients.

5. Respondent became board-certified by the American Board of Internal Medicine in 1993. She allowed this certification to lapse in 2003, but recertified in December 2018.

6. Respondent has never before faced discipline by the Board. She is generally well respected by her colleagues, as described more fully below in Findings 17 through 19.

### *Criminal Conviction*

7. On June 14, 2017, respondent was convicted in Alameda County of a misdemeanor violation of Vehicle Code sections 23103 and 23103.5 (reckless driving after consuming alcohol).

8. The crime occurred late at night on January 20, 2017. At or shortly after 11:30 p.m., respondent was approaching her home in her car. She misjudged a corner and her car collided with a car parked at the curb. A witness called police; after a short investigation, responding officers arrested respondent on suspicion of driving while under the influence of alcohol. At around 12:30 a.m. on January 21, the officers used a Preliminary Alcohol Screening device to estimate respondent's blood alcohol concentration, from a breath sample, at about 0.22 percent. Forensic analysis of respondent's blood, drawn between 1:49 and 2:00 a.m. on January 21, also showed her blood alcohol concentration to be 0.22 percent.

9. The court placed respondent on probation for three years. In addition, the court ordered respondent to complete 9 additional days in the county jail<sup>1</sup> or half this time in the Sheriff's Work Alternative Program; to pay a fine of more than \$2,000; and to attend a nine-month "driving under the influence school." Respondent paid the fine right away and has completed both her service in the Sheriff's Work Alternative Program and her drinking driver course. She remains on probation until June 2020.

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<sup>1</sup> After her blood test, police officers took respondent to jail. She was released later in the morning on January 21, 2017.

### *Events Preceding Collision and Arrest*

10. Respondent saw patients at Kaiser Permanente on Friday, January 20, 2017. She left work around 7:30 p.m. After helping a friend whose car had been vandalized in the parking lot, respondent went to a restaurant in San Leandro to meet other friends.

11. Respondent recalls that she ordered a glass of white wine when she arrived at the restaurant, and received it promptly. She also ordered a meal, and later a second glass of wine. Near closing time, someone else ordered a third glass of wine for respondent, which she accepted and drank. In total, respondent spent about two hours in the restaurant.

12. A typical restaurant wine pour is about five ounces. The restaurant did not serve respondent's wine in unusually large, or full, glasses. To respondent's knowledge, no one topped off her glass. According to her testimony, the approximately 15 ounces of ordinary white wine she described were the only alcoholic drinks respondent recalls having consumed that evening.

13. Respondent told a Board staff member at her investigative interview that the restaurant closed at 10:00 p.m. and that she left when it closed. By car, the trip from the restaurant to respondent's neighborhood should have taken about 20 minutes. Allowing time for respondent to wish her friends good night and to prepare to drive home, she would have arrived in her neighborhood by about 10:30 p.m. if she had driven directly there.

14. The police officer's report following respondent's arrest states, however, that the responding officer received a dispatch call to the collision at 11:55 p.m. No evidence resolved this time discrepancy, or explained where respondent might have been or what she might have done between leaving the restaurant near her workplace shortly after 10:00 p.m. and hitting a parked car near her home shortly after 11:30 p.m.

15. After colliding with the parked car, respondent continued driving a short distance and parked her car outside her home. She then walked back to the car she had hit, intending to leave her contact and insurance information for the owner. She testified, credibly and reasonably, that she had continued to her own home before stopping because her home was the nearest safe place to park and not because she intended to avoid financial responsibility to the owner of the car she had hit.

16. Respondent acknowledges that her blood alcohol concentration at 1:49 a.m. was much higher than it likely would have been if she had consumed only as much alcohol as she recalls, and if she had consumed the last of that alcohol between three and four hours earlier. Even if the bartender at the restaurant had been generous, pouring respondent's wine in six- or seven-ounce servings, she would have needed to consume more than three such glasses between 8:00 p.m. and 10:00 p.m. to have a blood alcohol concentration of 0.22

percent at 1:49 a.m.<sup>2</sup> Nevertheless, respondent either does not recall or refuses to admit having drunk any alcohol during the evening of January 20, 2017, other than three glasses of wine between about 8:00 p.m. and 10:00 p.m.

### *Professional and Personal References*

17. Khai Tran, M.D., is the chief of adult and family medicine at Kaiser Permanente in San Leandro. He has known respondent since he began practicing at Kaiser Permanente in 2004. Dr. Tran believes that respondent is a good physician; he testified credibly that he and her other colleagues are fully satisfied with her work. Dr. Tran has never seen any indication that respondent abuses alcohol, and to his knowledge she has no reputation among their colleagues as a heavy or unhealthy drinker.

18. Louis Edelson, M.D., is an internist at Kaiser Permanente in San Leandro. Dr. Edelson has been at Kaiser Permanente for more than 34 years, and has known respondent since she started there almost 30 years ago. He thinks she is a very good physician; he recruited respondent to move to San Leandro from Fremont because he thought highly of her. Dr. Edelson noted that the adult and family medicine physicians at Kaiser Permanente sometimes have departmental social events involving alcohol, including on occasion overnight retreats where attendees do not need to consider driving after drinking. He has seen respondent drink alcohol in the past, but has never observed her to be a heavy drinker.

19. Jacqueline Richards, M.D., retired in January 2018 after more than 30 years as an internist at Kaiser Permanente. She met respondent in residency at Highland General Hospital and they have been close friends ever since. In addition to their personal friendship, they have been professional colleagues, most recently at Kaiser Permanente in San Leandro. Dr. Richards describes respondent as a loyal, dependable friend and physician with a strong professional reputation among their colleagues and patients.

20. Dwain Troup is respondent's fiancé. He has known respondent for about eight years. They do not share a home. Troup was not with respondent on the evening of January 20, 2017, but he picked her up from jail on January 21, 2017. He describes her as having been terrified, and having remained anxious ever since about the impact her arrest might

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<sup>2</sup> Medical toxicologist Timur S. Durrani, M.D., noted that ordinary table wines usually have between 9 percent and 14 percent alcohol by volume. Dr. Durrani testified persuasively and without contradiction that respondent likely would have needed to consume more than 114 grams of alcohol (35 ounces of wine at 14 percent alcohol by volume) between 8:00 p.m. and 10:00 p.m. to have had a blood alcohol concentration of 0.22 percent at 1:49 a.m. The evidence established, and Dr. Durrani acknowledged, that this estimate is rough, because of individual variations in body composition and metabolism and because of the influence of the meal respondent also consumed. Nevertheless, no evidence plausibly reconciled respondent's 1:49 a.m. blood alcohol concentration against her own description of her food and wine consumption earlier that same evening.

have on her career. Troup notes that respondent has never shown him any indication of alcohol abuse, and always has been a responsible alcohol user in his company.

21. Before respondent's arrest on January 20, 2017, both Troup and Dr. Richards had consumed alcohol with respondent. Neither has seen respondent use alcohol since then.

### *Psychological Evaluation*

22. Respondent engaged Mark R. Zaslav, Ph.D., a clinical psychologist, to evaluate and report on her mental health. Dr. Zaslav has extensive clinical experience, including experience identifying and treating substance use disorders. He conducted a clinical interview and standardized psychological testing with respondent in March 2017, and a follow-up interview in June 2018. Dr. Zaslav also reviewed documents relating to respondent's arrest, including the police report and a transcript of respondent's interview with a Board investigator.

23. Respondent told Dr. Zaslav that before her arrest, she drank alcohol only occasionally and socially, and never in large amounts. For a person who does not drink alcohol regularly, even the amount of alcohol respondent testified to having consumed before her arrest would be an unusually large amount to drink in one session. In light of her decision to drive home on January 20, 2017, after drinking at least three glasses of wine, respondent's characterization to Dr. Zaslav of her pre-arrest alcohol use as "minimal to moderate" is at best weakly credible.

24. Respondent also denied to Dr. Zaslav recalling any more than three glasses of wine before her arrest on January 20, 2017. He explained this denial by noting that people often underestimate, unintentionally, the amount of alcohol they consume. This observation was not in controversy; but simple underestimation is inadequate to explain how respondent could have consumed more than twice as much alcohol during a two-hour restaurant visit than she professes to recall having consumed.

25. Respondent told Dr. Zaslav that she had not consumed alcohol at all since her arrest on January 20, 2017. She reported that she has had no difficulty abstaining from alcohol, even when she is with other people who are drinking. Respondent repeated these statements in her testimony at the hearing, and this testimony was credible.

26. Dr. Zaslav concluded that respondent is psychologically healthy. He diagnosed no psychological disorders; in particular, he concluded that respondent does not have and never has had an alcohol use disorder.

27. Dr. Zaslav's failure to explore or explain the inconsistencies described in Findings 23 and 24 undermines his opinion. His conclusion that respondent's decision to drive while under the influence of alcohol on January 20, 2017, does not by itself demonstrate that she has an alcohol use disorder is persuasive. At the same time, however, his broader conclusion that respondent shows no other indications of an alcohol use disorder

(even in remission), or of past unhealthy alcohol use, is less persuasive, because it rests in part on the dubious self-reports described in Findings 23 and 24.

28. Dr. Zaslav testified that regardless of respondent's self-assessment when she chose to drive home on January 20, 2017, she actually had consumed enough alcohol to be dangerous to herself and to other people. No evidence contradicted this credible opinion.

## LEGAL CONCLUSIONS

1. The Board may discipline respondent's physician's and surgeon's certificate only upon presenting clear and convincing proof, to a reasonable certainty, of the facts establishing cause for discipline. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The factual findings above reflect this standard.

2. The Board may discipline respondent's physician's and surgeon's certificate if she has engaged in unprofessional conduct. (Bus. & Prof. Code, § 2234.)

3. Conviction of a crime that relates substantially to a physician's qualifications, functions, or duties is unprofessional conduct. (Bus. & Prof. Code, § 2236, subd. (a).) A crime relates substantially to a physician's qualifications, functions, or duties if it demonstrates "present or potential unfitness" to practice medicine. (Cal. Code Regs., tit. 16, § 1360.)

4. A single misdemeanor involving driving and alcohol does not, in and of itself, demonstrate a physician's present or potential unfitness to practice. (*Cf.* Bus. & Prof. Code, § 2239, subd. (a).) In this case, however, the matters stated in Finding 8 show that respondent's crime arose from a major, not minor, error in judgment; and the matters stated in Findings 11 through 14 and 16 demonstrate a significant defect in either recall or candor about the events that led to the crime. In light of these matters, the conviction described in Finding 7 constitutes cause for discipline against respondent.

5. Use of alcohol to an extent that is dangerous for a physician, or for others around him or her, also is unprofessional conduct. (Bus. & Prof. Code, § 2239, subd. (a).) The matters stated in Findings 8, 10 through 16, and 28 establish cause for discipline against respondent under this statute.

6. The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (Cal. Code Regs., tit. 16, § 1361, subd. (a)) recommend at least five years' probation for licensees who have committed unprofessional conduct involving alcohol. A period of probation is appropriate in this matter to permit the Board to confirm respondent's ability to maintain sound judgment about alcohol use. The matters stated in Findings 17 through 21 and 25 through 27 show, however, that a three-year probation will be adequate, assuming respondent completes it successfully, to confirm her ability to avoid alcohol misuse.

7. Despite the matters stated in Findings 26 and 27, the matters stated in Legal Conclusions 4 and 5 require the Board to treat respondent as a "substance-abusing licensee" in evaluating appropriate discipline. (Cal. Code Regs., tit. 16, § 1361.5, subd. (a).) The Board has adopted Uniform Standards for Substance-Abusing Licensees that include optional and standard probation terms for such matters. (*Id.*, § 1361, subd. (b).)

a. A clinical diagnostic evaluation is optional. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(1)(A).) Because of the matters stated in Findings 22 through 27, the Board reasonably may require respondent to undergo a further mental health evaluation, and to follow any therapeutic recommendations that arise from that evaluation.

b. Communication with respondent's employer and supervisor is a standard term. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(2).)

c. Biological fluid testing to confirm abstinence from alcohol and from unprescribed psychoactive drugs is a standard term. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(3)(A).)

d. Group support meetings are optional. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(4).) The matters stated in Findings 21 and 25 through 27 do not show that they are necessary in this matter.

e. A worksite monitor is optional. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(5)(A).) The matters stated in Findings 17 through 19 do not show that one is necessary for respondent.

f. A term defining "major" and "minor" violations, and describing penalties for such violations, is standard. (Cal. Code Regs., tit. 16, §§ 1361.5, subd. (c)(6), 1361.52.)

8. In addition to the Board's standard probation terms, several of its optional terms other than those in the Uniform Standards for Substance-Abusing Licensees also are appropriate for respondent.

a. Respondent should abstain from alcohol and from unprescribed psychoactive drugs.

b. Complainant argued that respondent should perform community service as a condition of her probation. The matters stated in Finding 3 establish that respondent does perform some community service, but the circumstances of this case do not show that such service should be a condition of her probation.

c. Complainant also argued that respondent should take a refresher medical education course. Because the events at issue in this matter do not arise from any



lack of medical knowledge, however, such additional continuing medical education is not necessary as a condition of respondent's probation.

d. The matters stated in Findings 12, 16, 23, and 24 show that a professionalism program is an appropriate probation condition for respondent.

### ORDER

Physician's and Surgeon's Certificate No. A 45877, issued to respondent Marta Moreno, M.D., is revoked. The revocation is stayed, however; and respondent is placed on probation for three years on the following terms and conditions.

#### 1. Clinical Diagnostic Evaluations and Reports

Within thirty (30) calendar days of the effective date of this decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a board certified physician and surgeon appointed by the Board. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether respondent has a substance abuse problem, whether respondent is a threat to herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that respondent is a threat to herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether respondent is safe for either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: respondent's license type; respondent's history; respondent's documented length of sobriety (*i.e.*, length of time that has elapsed since respondent's last substance use); respondent's scope and pattern of substance abuse;

respondent's treatment history, medical history and current medical condition; the nature, duration and severity of respondent's substance abuse problem or problems; and whether respondent is a threat to herself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether respondent is safe for either part-time or full-time practice and what restrictions or recommendations shall be imposed on respondent based on the recommendations made by the evaluator. If removed from practice following a clinical diagnostic evaluation, respondent shall not be returned to practice until she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that she has not used, consumed, ingested, or administered to herself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent may engage in the practice of medicine unless and until notified by the Board or its designee that she is unfit to practice medicine safely. Any period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this decision while awaiting the results of any clinical diagnostic evaluation.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

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## 2. Notice of Employer or Supervisor Information

Within seven (7) days of the effective date of this decision, respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board and respondent's employers and supervisors to communicate regarding respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the respondent has medical staff privileges.

### 3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the respondent.

During the first year of probation, respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to three (3) years, respondent shall be subject to 36 to 104 random tests per year. Only if there have been no positive biological fluid tests in the previous three (3) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine after the effective date of this order, respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.

- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
  - (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.
  - (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test respondent on any day of the week.
  - (h) Its testing locations are able to test scientifically for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
  - (i) It maintains testing sites located throughout California.
  - (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the respondent to check in daily for testing.
  - (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
  - (l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.
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- (m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within

seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

If a biological fluid test result indicates respondent has used, consumed, ingested, or administered to herself a prohibited substance, the Board shall order respondent to cease practice and instruct respondent to leave any place of work where respondent is practicing medicine or providing medical services. The Board shall immediately notify all of respondent's employers, supervisors and work monitors, if any, that respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by respondent and approved by the Board, alcohol, or any other substance respondent has been instructed by the Board not to use, consume, ingest, or administer to herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, respondent has committed a major violation, as defined in California Code of Regulations, title 16, section 1361.52, subdivision (a); and the Board shall impose any or all of the consequences set forth in California Code of Regulations, title 16, section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance respondent's rehabilitation.

#### 4. Alcohol: Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the cease-practice notification shall be dissolved.

#### 5. Controlled Substances: Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately

cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the cease-practice notification shall be dissolved.

#### 6. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a professionalism program that meets the requirements of California Code of Regulations, title 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken before the effective date of the decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the decision, whichever is later.

7. Notification

Within seven (7) days of the effective date of this decision, respondent shall provide a true copy of the decision and the accusation in this matter to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

9. Obey All Laws

Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine in California. Respondent shall remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes: Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).



Place of Practice: Respondent shall not engage in the practice of medicine in respondent's or a patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal: Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California: Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice, throughout the term of probation.

13. Non-Practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

14. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

15. Violation of Probation Condition for Substance-Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue an immediate cease-practice order and order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at respondent's expense. The cease-practice order issued by the Board or its designee shall state that respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of the determining the length of time a respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that she may do so.
- (2) Increase the frequency of biological fluid testing.
- (3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

B. If respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue a cease-practice order;
- (2) Order practice limitations;
- (3) Order or increase supervision of respondent;
- (4) Order increased documentation;
- (5) Issue a citation and fine, or a warning letter;
- (6) Order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at respondent's expense;
- (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this decision shall be considered a limitation on the Board's authority to revoke respondent's probation if she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation, or petition to revoke probation, or an interim suspension order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

#### 16. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of

probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: January 29, 2019.

DocuSigned by:

*Juliet E. Cox*

JULIET E. COX

Administrative Law Judge  
Office of Administrative Hearings

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2 Attorney General of California  
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12 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO MARCH 14, 2018  
BY: R. C. N. A. G. ANALYST

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 800-2017-029617

11 **Marta Moreno, M.D.**  
12 **2500 Merced Street**  
13 **San Leandro, CA 94577-4201**

**ACCUSATION**

14 **Physician's and Surgeon's Certificate**  
15 **No. A 45877,**

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
21 Affairs (Board).

22 2. On or about March 20, 1989, the Medical Board issued Physician's and Surgeon's  
23 Certificate Number A 45877 to Marta Moreno, M.D. (Respondent). The Physician's and  
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on December 31, 2018, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1           4.     Section 2227 of the Code provides that a licensee who is found guilty under the  
2 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
3 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
4 action taken in relation to discipline as the Board deems proper.

5           5.     Section 2234 of the Code states, in part:

6           “The board shall take action against any licensee who is charged with unprofessional  
7 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
8 limited to, the following:

9           “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
10 violation of, or conspiring to violate any provision of this chapter.”

11          6.     Section 2236 of the Code states:

12          “(a) The conviction of any offense substantially related to the qualifications, functions, or  
13 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this  
14 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive  
15 evidence only of the fact that the conviction occurred.

16          “... (d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is  
17 deemed to be a conviction within the meaning of this section and Section 2236.1. The record of  
18 conviction shall be conclusive evidence of the fact that the conviction occurred.”

19          7.     Section 2239 of the Code states:

20          “(a) The use or prescribing for or administering to himself or herself, of any controlled  
21 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
22 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
23 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
24 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
25 consumption, or self-administration of any of the substances referred to in this section, or any  
26 combination thereof, constitutes unprofessional conduct. The record of the conviction is  
27 conclusive evidence of such unprofessional conduct.

1       “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
2 deemed to be a conviction within the meaning of this section. The Medical Board may order  
3 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the  
4 denial of the license when the time for appeal has elapsed or the judgment of conviction has been  
5 affirmed on appeal or when an order granting probation is made suspending imposition of  
6 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal  
7 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,  
8 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or  
9 indictment.”

10       8. California Code of Regulations, title 16, section 1360, states:

11       “For the purposes of denial, suspension or revocation of a license, certificate or permit  
12 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be  
13 considered to be substantially related to the qualifications, functions or duties of a person holding  
14 a license, certificate or permit under the Medical Practice Act if to a substantial degree it  
15 evidences present or potential unfitness of a person holding a license, certificate or permit to  
16 perform the functions authorized by the license, certificate or permit in a manner consistent with  
17 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the  
18 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
19 violation of, or conspiring to violate any provision of the Medical Practice Act.”

20                               **CAUSE FOR DISCIPLINE**

21                               **(Unprofessional Conduct – Criminal Conviction/Dangerous Use of Alcohol)**

22       9. Respondent Marta Moreno, M.D. is subject to disciplinary action under section 2234  
23 (unprofessional conduct), and/or section 2236 and California Code of Regulations, title 16,  
24 section 1360 (criminal conviction), and/or section 2239 (dangerous use of alcohol), in that on or  
25 about June 14, 2017, in a criminal proceeding entitled *The People of the State of California v*  
26 *Marta Moreno*, in the Alameda Superior Court, Case Number 17-CR-004393, Respondent was  
27 convicted by plea of “no contest” to violating California Vehicle Code section 23103/23103.5,  
28 “wet reckless” driving. The circumstances are as follows:

1       a.     On or about January 21, 2017, at approximately 12:30 a.m., in Oakland, California,  
2     Respondent was arrested for driving under the influence of alcohol after a witness observed  
3     Respondent strike a parked vehicle with her own car and then drive off. The witness later  
4     observed Respondent walk back to the scene of the collision, stumbling as she did so, only to note  
5     that Respondent then again left the scene of the accident.

6       b.     After initially being contacted by the police, and claiming to have consumed three (3)  
7     glasses of wine between 7:30 p.m. and 10:30 p.m. on January 20, 2017, Respondent provided  
8     preliminary alcohol screening tests that registered .219% and .218 % blood alcohol content  
9     (BAC) at 12:26 a.m. and 12:28 a.m., respectively. On or about January 21, 2017, a blood draw of  
10    Respondent was conducted at 1:49 a.m. The result of the blood draw was a BAC of .22%.

11      c.     Respondent was charged by the Alameda County District Attorney's Office with  
12    violating California Vehicle Code sections 23152(a), driving under the influence; and 23152(b),  
13    driving with a BAC in excess of 0.08%. Additionally, Respondent was charged with the  
14    enhancement of driving with a BAC in excess of 0.15%, pursuant to California Vehicle Code  
15    section 23578.

16      d.     On or about June 14, 2017, the charges of violating California Vehicle Code sections  
17    23152(a) and (b) were dismissed after the Alameda County prosecutor represented to the court  
18    that Respondent "will lose her license if she is convicted of DUI. That punishment is  
19    disproportionate to the crime." That same prosecutor then amended the pleadings, charging  
20    Respondent with violating California Vehicle Code sections 23103/23103.5, "wet reckless,"  
21    which is considered a prior driving under the influence offense pursuant to California Vehicle  
22    Code sections 23540, 23546, 23550, 23560, 23566 and 23622.

23      e.     On or about June 14, 2017, Respondent pleaded "no contest" to violating California  
24    Vehicle Code sections 23103/23103.5. Respondent was sentenced by the court to ten (10) days in  
25    custody with credit for one (1) day served, and the remainder to be completed through the  
26    Sheriff's Weekend Alternative Program; three (3) years probation; a fine of \$2,054.00; restitution  
27    for damage to the other vehicle; and a nine (9) month DUI program.



1 10. Respondent engaged in unprofessional conduct, pursuant to section 2234 of the Code,  
2 by virtue of the fact that Respondent drove a vehicle while under the influence of an excessive  
3 amount of alcohol in a manner dangerous to Respondent and others in violation of section 2239  
4 of the Code.

5 11. Respondent's criminal conviction for "wet reckless" driving, which is considered a  
6 prior driving under the influence offense pursuant to California Vehicle Code sections 23540,  
7 23546, 23550, 23560, 23566 and 23622, is substantially related to the qualifications, functions  
8 and duties of a physician and surgeon, and constitutes unprofessional conduct and cause for  
9 discipline pursuant to sections 2234 and 2236 of the Code, and title 16, section 1360 of the  
10 California Code of Regulations.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Medical Board of California issue a decision:

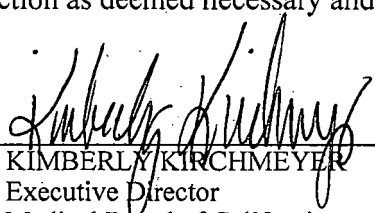
14 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 45877,  
15 issued to Marta Moreno, M.D.;

16 2. Revoking, suspending or denying approval of Marta Moreno, M.D.'s authority to  
17 supervise physician assistants and advanced practice nurses;

18 3. Ordering Marta Moreno, M.D., if placed on probation, to pay the Board the costs of  
19 probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.

21  
22 DATED: March 14, 2018

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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26 SF2018400318  
27 accusation - mbc.rtf  
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